IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5290 of 1997
With
SPECIAL CIVIL APPLICATION No. 5317 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SHAH RAHUL BHARATBHAI & 1 - Petitioner(s)

Versus

GUJARAT SMALL INDUSTRIES CORPN. LTD & 1 - Respondent(s)

==========

Appearance :
MR MJ PARIKH for Petitioner(s) : 1 - 2.
MR DC DAVE for Respondent(s) : 1,
RULE UNSERVED for Respondent(s) : 2,
==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/02/2006

ORAL JUDGMENT

1. As the common question of facts and law arise in both these petitions, they are being disposed of by this common judgement.

2. So far as Special Civil Application No.5290 of 1997 is concerned, the same is filed by the petitioners for appropriate writ, order and/or directions directing the respondents not to auction the property of the petitioners i.e. Office No.301, Labh Complex, Sattar Taluka Society, Near Income Tax, Ahmedabad.

3. So far as Special Civil Application No.5317 of 1997 is concerned, the same is filed by the petitioner for appropriate writ,order and/or directions directing the respondents not

to auction the property i.e. Shop No.41.

4. It is the case on behalf of the petitioners of Special Civil Application No.5290 of 1997 that the property / office in question which is sought to be auctioned by the respondent – Gujarat Small Industries Corporation Limited was allotted to one Snehaben alias Snehalben Jaykrishna alias Jitubhai Vyas and said Snehaben alias Snehalben has sold the aforesaid office to the petitioners for consideration of Rs.3 Lacs by registered sale deed dtd.2/5/1997. It is the case on behalf of the petitioners that having filed Summary Civil Suit NO.1847 of 1997 against said Snehaben alias Snehalben for the recovery of Rs.3 Lacs and the said matter was settled and against the aforesaid dues along with interest and costs, the said Snehaben alias Snehalben had agreed to sell the aforesaid property for a consideration of Rs.2,1,501=00 and thereafter, executed the aforesaid sale deed in favour of the

petitioners and on the same day, the possession of the property was handed over to them and by this way since 2/5/1997, they are in possession of the sale property as the owner of the said property. It is the contention on behalf of the petitioners that there is no charge or any other liability of the respondents and that on 10/7/1997, the respondents have issued notice by RP Ad. to various persons including said Snehaben alias Snehalben who was shown as Director of one Jay Nevy Pharmaceuticals Limited wherein it is stated that the respondent will auction the aforesaid property shown in the notice on 19/7/1997 at 1-00 p.m. and the said notice was given by the said Snehaben to the petitioner on 18/7/1997, wherein the property which is purchased by the petitioners is also shown and therefore, they have preferred Special Civil Application No.5290 of 1997 for the aforesaid relief.

5. Mr.M.J. Parikh, learned advocate appearing on behalf of the petitioners of Special Civil application No.5290 of 1997 has submitted that the petitioners are bonafide purchasers the property in question which is put to auction by the respondents for consideration of Rs.2,11,501.00 and that there is no charge or any other liability of the respondents and therefore, it is submitted that the respondents cannot auction the property of the petitioners which is purchased by them from said Snehaben alias Snehalben Jaykrishna alias Jitubhai Vyas.

6. Nobody appears on behalf of petitioner of Special Civil Application No.5317 of 1997.

7. In response to the notice issued by this Court, Mr.Dhaval Dave, learned advocate appears on behalf of the respondents and an Affidavit-in-Reply is filed on behalf of the respondents. It is submitted that the contention on behalf of the

petitioners questioning the right of the respondents to auction the said property for the purpose of realising the dues of respondent No.1 is absolutely devoid of substance, it is submitted that a certificate of recovery as contemplated by the provisions embodied in Section (1) of the Gujarat Public Money (Recovery of Dues) Act, 1979 came to be issued for and on behalf of the respondent No.1 against one Jay Navy Pharmaceuticals Limited and several other persons including said Snehalben Jaynarayan Vyas, who came to be described therein by her maiden name “Snehalben C.Trivedi.”. It is also further submitted that subsequent to the aforesaid certificate of recovery, the respondent No.2 being officer authorised to precipitate a further course of action under the provisions of the aforesaid Act, addressed a show cause notice dtd.17/6/1996, as contemplated by the provisions embodied in Section 3(2) of the Act inter-alia calling upon the persons named therein, including

the said Snehaben to remain present before him for hearing on the date mentioned therein and the said show cause notice dtd.17/6/1996 was duly served upon all the concerned including the said Snehalben. It is also further submitted that subsequent thereto, the respondent No.2- Recovery Officer addressed a notice of demand, as contemplated by the provisions embodied in Sec.152 of the Bombay Land Revenue Code, 1897, inter-alia declaring that a sum of Rs.1,17,19,685.00 has remained due and payable from all concerned named therein, including the said Snehalben. It is the contention on behalf of the respondents that the said notice of demand was also duly served upon all the concerned including said Snehalben. It is the contention on behalf of the respondents that as there was no response from anybody, the respondent No.2 thereupon passed an order dtd.4/11/1996 whereunder it was mentioned that as the concerned persons named therein including the said

Snehalben have failed to effect the payment of the amount, which has become due and payable to the respondent NO.1, would be recovered from the concerned persons, including the said Snehalben, under the provisions of the Bombay Land Revenue Code. It is also further submitted in the reply that the aforesaid was followed by an order of attachment dtd.28/11/1996 inter-alia, for causing sale of the property, referred to therein as contemplated by sec.155 of the Bombay Land Revenue Code and the said order of attachment was also served upon all the concerned including said Snehalben. It is also further submitted in the reply that in the order of attachment dtd.20/11/1996, the property in question being 301, Labh Complex, Sathar Taluka Society, Near Income Tax, Ahmedabad is also referred. It is also further submitted in the reply that after the aforesaid attachment order dtd.20/11/1996, a public notice in daily news paper “Sandesh” dtd.13/12/1996 came to be published wherein it

came to be specifically and categorically mentioned that no person shall deal with in any kind of transaction in respect of any property belonging to the units named therein or the persons connected therewith. It is also further submitted that after the aforesaid proceedings, the possession of the property was required to be obtained and thereupon, the same was to be auctioned for the purpose of realising dues of the respondent No.1 and as a result thereof 19/7/1997 came to be fixed by the respondent No.2 – Recovery Officer for the purpose of securing the possession of the same by issuing appropriate notice in this behalf and at that stage, the present petition came to be filed and the petitioners obtained interim orders. Mr.Dhaval Dave, learned advocate appearing on behalf of the respondents has submitted that when the property in question was already under the attachment in favour of the respondent No.1 and even public notice was given, still, with a view

to defeat the dues of the respondent No.1, the transaction came to be entered into by the petitioners and said Snehalben in a most doubtful manner. He has submitted that the sale deed dtd.2/5/1997 does not appear to be genuine and the same appears to have been executed solely with a view to create a stumbling block in the way of respondent No.1 in realising he said property. He has also further submitted that though as per the Certificate issued by the registered Valuer, the valuation of the property in question was to the tune of Rs.20,30,000.00 as back as on 13/12/1996, the property is alleged to have been sold for a consideration of Rs.2,11,501.00 only, that too by obtaining consent decree subsequently, i.e. subsequent to the aforesaid proceedings. It is also further submitted by him that on account of the offence of criminal breach of trust and forgery committed by the Director of said Jay Nevy Pharmaceuticals Limited as well as the said Snehalben, the

respondent has filed criminal complaint against all concerned, including the said Snehalben and therefore, it is requested to dismiss the present petition with exemplary costs.

8. As nobody appears on behalf of the petitioner of Special Civil Application No.5317 of 1997, this Court has considered the averments in the petition and on going through the same it appears from the record that the petitioner is also submitting that he has purchased the property in question from the aforesaid Snehaben alias Snehalben Jaykrishna alias Jitubhai Vyas vide registered sale deed dtd.18/9/1996.

9. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the petitioners of Special Civil application No.5290 of 1997 have purchased the property in question by registered sale deed dtd.2/5/1997 and that too by obtaining a consent decree in Summary

Civil Suit No.1847 of 1997. As averred in the reply on behalf of the respondent, said Snehaben alias Snehalben Jaykrishna alias Jitubhai Vyas was one of the director of Jay Nevy Pharmaceuticals Limited and an amount of Rs.1,17,19,685.00 was due and payable to the respondent No.1 Corporation by the said Company and its Directors. It appears from the record that a Certificate of Recovery as contemplated under sec.3(1) of Gujarat Public Money (Recovery of Dues), 1979 came to be issued for and on behalf of the respondent No.1 against the said company i.e. Jay Nevy Pharmaceuticals Limited and other persons including the said Snehalben Vyas who came to be described by her maiden name and the said certificate of recovery is dtd.12/6/1996. That subsequent to the issuance of the aforesaid certificate of recovery dtd.12/6/1996, a show cause notice dtd.17/6/1996 as required under sec.3(2) of the Act calling upon the petitioners including the said

Snehalben came to be issued and the respondent No.2 addressed a notice of demand dtd.4/11/1996 as contemplated under sec.155 of the Bombay Land Revenue Code with a declaration that a sum of Rs.1,17,19,685.00 remains due and payable by all the concerned including the said Snehalben and the said notice was served upon the said Snehalben also. That thereafter, a further order came to be passed on 4/11/1996. That thereafter, an attachment order came to be passed on 20/11/1996 for causing sale of the property as contemplated under sec.155 of the Bombay Land Revenue Code and the property in question was attached by the competent authority. It also appears from the record that thereafter even after the said attachment, a public notice in a daily new paper "Sandesh" came to be published on 13/12/1996 wherein, it came to be specifically and categorically mentioned that no person shall deal with any kind of transaction in respect of any property belonging to the units named therein

or the persons connected therewith. Inspite of the aforesaid facts, the said Snehalben sold the property in question to the respective petitioners and the petitioners purchased the same. It is required to be noted that so far as the petitioners of Special Civil Application No.5290 of 1997 are concerned, after the aforesaid proceedings, the attachment orders of the property in question, they filed Summary Civil Suit No.1847 of 1997 against the said Snehalben for the recovery of Rs.3 Lacs and obtained consent decree and thereafter the aforesaid sale deed came to be executed on 2/5/1997. Further, as stated in the reply that the valuation of the property in question of Special Civil Application No.5290 of 1997 as per the registered valuer was Rs.20,30,000.00 as on 13/12/1996, however, the sale consideration for the disposal of the property in question is shown at Rs.2,11,501.00 only. The petitioners purchased the property in question though the

same was under the attachment and though all the concerned were warned by a public notice that nobody should purchase the property in question. The aforesaid conduct clearly shows the collusion between said Snehaben alias Snehalben Jaykrishna alias Jitubhai Vyas and the petitioners. Thus, the aforesaid transaction between the petitioner and said Snehaben alias Snehalben Jaykrishna alias Jitubhai Vyas prima facie seems to be with a view to defeat the dues of the respondent No.1.

10. Over and above aforesaid, even considering the fact that the present petition is under Article 226 of the Constitution of India and considering the aforesaid facts and circumstances and the conduct on the part of the parties, the petitioners are not entitled to any discretionary and equitable relief. The petitioners cannot be permitted to defeat the legitimate dues of the respondent No.1.

11. For the reasons stated above, both the petitions are required to be dismissed and are accordingly dismissed. Rule is discharged. Interim relief granted earlier is hereby vacated forthwith.

12. At this stage, Mr.Parikh, learned advocate appearing on behalf of the petitioner of Special Civil Application No.5290 of 1997 has requested to continue the interim relief granted earlier.

13. Considering the facts and circumstances and for the reasons stated hereinabove, the said prayer is rejected.

(M.R.SHAH,J)

rafik